



PUBLIC NOTICE

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DA 05-387
February 11, 2005

DOMESTIC AUTHORIZATION GRANTED

APPLICATION OF INFONET BROADBAND SERVICES CORPORATION AND INFONET TELECOMMUNICATIONS CORPORATION TO TRANSFER CONTROL OF FCC LICENSES AND AUTHORIZATIONS TO BT GROUP PLC

WC Docket No. 04-421

By the Chief, Wireline Competition Bureau:

On November 19, 2004, Infonet Services Corp. ("Infonet") and BT Group plc ("BT Group") (together, the "Applicants") filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules¹ requesting approval to transfer control of Infonet Telecommunications Corporation ("ITC") from Infonet to BT Group.² BT Group is a widely-held public corporation and holding company organized under the laws of England and Wales.³ Upon consummation of the transaction giving rise to the transfer of control, ITC will be wholly-owned by BT United States L.L.C., a Delaware limited liability company that is indirectly wholly-owned and controlled by BT Group.⁴

The Commission released a public notice accepting this application for streamlined processing on November 30, 2004.⁵ Subsequently, on December 14, 2004, the Applicants, along with the United States

¹ 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants also filed for transfer of control related to international section 214 authority held by ITC's affiliate, Infonet Broadband Services Corporation ("IBSC"), as well as an Infonet wireless license, both of which are part of this same transaction.

³ No person or entity owns 10 percent or more of the equity of BT Group. *See* Letter from Yaron Dori, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-421, (November 24, 2004) at 1.

⁴ The vertical ownership structure between BT United States L.L.C. and BT Group is through multiple BT affiliates, each of which is organized under the laws of England and Wales. Specifically, BT United States L.L.C. is 100% owned by BT Fifty-Three Limited. BT Fifty-Three Limited is, in turn, owned by BT Fifty-One, Limited (33%) and BT (International) Holdings Limited, (67%), both of which are 100% owned by BT Holdings Limited. BT Holdings Limited is wholly owned by British Telecommunications plc ("BT"), which is, in turn, 100% owned by BT Group Investments Limited. BT Group Investments Limited is wholly-owned by BT Group.

⁵ *Domestic Section 214 Application Filed for Transfer of Control of Infonet Broadband Services Corporation and Infonet Telecommunications Corporation to BT Group plc*, WC 04-421, Public Notice, DA 04-3791 (rel. Nov. 30, 2004).

Department of Justice (“DOJ”), including the Federal Bureau of Investigation (“FBI”) on behalf of the United States Department of Homeland Security (“DHS”) (collectively, the “Executive Branch Agencies”), filed with the Commission a joint petition to defer grant of this application while the Executive Branch Agencies and Applicants addressed potential national security, law enforcement, and public safety issues.⁶ On February 2, 2005, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and Licenses (“Petition”).⁷ In the Petition, the Executive Branch Agencies advised the Commission that they do not object to the grant of the instant application, provided that the Commission conditions such grant on compliance by BT Group with the commitments and undertakings made in a January 12, 2005 letter to the Executive Branch Agencies (the “BT Infonet Commitment Letter”),⁸ a copy of which was attached to the Petition. Applicants have not objected to the Petition.⁹

Consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies’ expertise on national security and law enforcement issues.¹⁰ The Executive Branch Agencies indicate that the commitments set forth in the BT Infonet Commitment Letter address their stated concerns regarding national security, law enforcement, and public safety.¹¹

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the Application, subject to the condition set forth in this Public Notice, will serve the public interest, convenience, and necessity.¹² Specifically, in accordance with the request of the Executive Branch

⁶ See Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to the Transfer of Control of Infonet Telecommunications Corp. to BT Group, plc, WC Docket No. 04-421, Joint Petition to Defer (filed Dec. 14, 2004) (Joint Petition to Defer).

⁷ Department of Justice, Federal Bureau of Investigation, and Department of Homeland Security, Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 04-421 (dated Jan. 31, 2005) (“Petition”).

⁸ Letter from Tim Cowen, General Counsel, Global Services, British Telecommunications plc, to Laura H. Parsky, Deputy Assistant Attorney General, United States Department of Justice, Tina W. Gabbrielli, Director of Intelligence Coordination and Special Infrastructure Protection Programs, United States Department of Homeland Security, and Patrick W. Kelley, Deputy General Counsel, Federal Bureau of Investigation (dated Jan. 12, 2005). This letter is attached to this Public Notice as Appendix A.

⁹ Moreover, the Executive Branch Agencies indicate they are authorized to state that the Applicants do not object to grant of the Petition. See Petition at 4.

¹⁰ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. See *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, ¶¶ 178-182 (1997) (“DISCO II Order”); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-921, ¶¶ 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000) (“Foreign Participation Order”). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. See *Foreign Participation Order*, 12 FCC Rcd at 23919-921, ¶¶ 61-66; see also *Applications of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, Memorandum Opinion & Order, 17 FCC Rcd 19212, 19228-29, ¶¶ 36-40.

¹¹ See Petition at 3.

¹² See 47 C.F.R. § 63.03(c)(v). Upon consummation of the transaction, BT Group will have a market share in the U.S. interstate interexchange market of less than 10 percent, and will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier in the U.S. that is not a party to the transaction. In addition, no party to this transaction is dominant with respect to any domestic service.

Agencies, in the absence of any objection from the Applicants, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules,¹³ the Wireline Competition Bureau hereby grants this Application conditioned on compliance with the commitments set forth in the BT Infonet Commitment Letter, which is attached hereto as Appendix A.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.¹⁴ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.¹⁵

For further information, please contact Alex Johns at (202) 418-1167, or Terri Natoli at (202) 418-1574, Competition Policy Division, Wireline Competition Bureau.

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¹³ 47 C.F.R. § 0.291.

¹⁴ *See* 47 C.F.R. § 1.103.

¹⁵ *See* 47 C.F.R. §§ 1.106, 1.115.

Appendix A

Infonet Commitment Letter